

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

GENARO ANTONGIORI,	:	
	:	C.A. No. K10A-02-001 WLW
Appellant,	:	
	:	
v.	:	
	:	
MOUNTAIRE FARMS and the	:	
UNEMPLOYMENT INSURANCE	:	
APPEAL BOARD,	:	
	:	
Appellees.	:	

Submitted: May 12, 2011

Decided: August 1, 2011

ORDER

Upon an Appeal of the Decision of the
Unemployment Insurance Appeal Board.

Affirmed.

Genaro Antongiori, *pro se.*

Unemployment Insurance Appeal Board, Wilmington, Delaware.

WITHAM, R.J.

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This is an appeal from a decision of the Delaware Unemployment Insurance Appeal Board dismissing an appeal of a claim for benefits. For the reasons set forth in this draft order, the decision is affirmed.

FACTS

Genaro Antongiorgi (“Appellant”) was employed by Mountaire Farms (“Appellee”) from March 12, 2009 until May 6, 2009 when he was terminated for leaving work early without permission. Appellant had previously signed a copy of Appellee’s “Conduct and Work Rules,” which provides, *inter alia*, that unauthorized absence from work is a basis for termination. A Delaware Department of Labor claims deputy denied Appellant’s claim for unemployment insurance benefits because she found that he had been terminated for cause. An appeals referee affirmed the decision. A hearing was scheduled before the Unemployment Insurance Appeal Board (“the Board”) on September 22, 2009. Appellant failed to appear, and the Board dismissed his appeal for failure to prosecute.

Appellant’s opening brief on appeal does not address the issue of whether the Board properly dismissed his case for failure to prosecute. Instead, he argues substantive questions regarding the propriety of his termination and makes unsupported allegations that his former employer should be investigated for employing illegal aliens.

Standard of Review

The Court has jurisdiction pursuant to Title 19, Section 3323 of the Delaware

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Code. In the absence of fraud, the Court defers to the Board's findings of facts.¹ Questions of law are reviewed *de novo*.

DISCUSSION

Appellant has not explained his failure to appear. Instead, his opening brief on appeal argues that it was unfair for his employer to terminate him for leaving work when he didn't feel well. The Court will not consider issues on appeal that were not raised on the record below. Here, the only issue is whether the Board was justified in dismissing the case when Appellant failed to appear at his scheduled hearing.

Under Delaware law, the Board may properly dismiss a case for failure to prosecute if a claimant fails to appear at a scheduled hearing.² Here, Appellant failed to appear at his scheduled hearing and has not explained why his absence should be excused. Therefore, the dismissal was proper.

CONCLUSION

For the foregoing reasons, the decision of the Unemployment Insurance Appeal Board is **AFFIRMED**. IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh
oc: Prothonotary
xc: Mr. Antongiorgi
Unemployment Insurance Appeal Board

¹ 19 Del. C. § 3323(a).

² *Patterson v. Peninsula Oil*, 1994 WL 89802 (Del. Super. Feb. 8, 1994).